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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,392	06/19/2001	Johannes Mattheus Cornelissen	F7545(V)	3581

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PATENT DEPARTMENT
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EXAMINER

BHAT, NINA NMN

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 07/22/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/884,392

Applicant(s)

CORNELISSEN ET AL.

Examiner

N. Bhat

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 11-13 provides for the use of the browning composition, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 11-13 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Applicant can easily obviate the rejection by delete the "Use of" language and reciting "A method for imparting a flavor to foodstuff by a spraying the composition of claim 7 on to the foodstuffs prior to heating." Similar type changes can be made for the other claims. Correction is required.

2. Claim 10 is objected to because of the following informalities: applicant has typed "claims 1" which should be --claim 1--. Appropriate correction is required.

3. Claims 6 is are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and

bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 6 recites the broad recitation of a browning agent in an amount from 0.1-5%, and the claim also recites a range from 1-3% which is the narrower statement of the range/limitation. Applicant can obviate this rejection by deleting the preferably language and the narrower range and adding a dependent claim which includes the narrower range.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Christophersen et al.

Christophersen et al. teach a sprayable browning emulsion composition for browning and flavoring foods. The browning agent is dissolved in the water phase of the emulsion. The emulsion comprises a fat or oil phase in an amount of 80-97%; a water phase, in an amount of 3-20% by weight and a browning agent from about 0.1-5%, preferably 1-3%. Adding emulsifiers and stabilizers can be used. One having ordinary skill in the art knows how to select what type of emulsifiers is to be used. The browning

composition can include starch, modified starch, salt, herbs, spices, colorants, and acid can be incorporated into the water phase in order to lower the pH of the water phase and to reduce microbial spoilage. The browning emulsions are sprayable using simple spraying equipment. The containers include bottles, cans, etc. which comprises dispersing means, pressurizing means, e.g. pressurized changes hand-powered pumping mechanism. The composition is sprayed on to the food. [Note Column 2, lines 5-11, Column 3, lines 5-61] The browning emulsion of Christophersen et al. overlap in range for the oil, water, and browning agent as claimed thus fully anticipating applicant's browning composition.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ballard et al. teach adding a browning agent to a potato topping or onto a portion of the potato with a browning agent. Adams et al. teach a browning agent which includes tea solids in an oil-in-water emulsion. The water is in an amount approximately 80%, the oil is between 5-25% and there is included a hydrocolloid gum as a thickener. Merabet teach an edible micro emulsion capable of browning and crispening food in the microwave. The water content is at least 80%, the oil content is at least 10%, amino acids and surfactant is used in the emulsion, the emulsion is coated onto food. Steinke et al. teach a browning composition which includes water in the amount 1-30%, oil in the amount of 10-90%, browning age, and a surfactant to stabilize the emulsion, the emulsion is opaque and is not sprayed only brushed or coated onto food. Andreae et al. teach a high temperature cooking sauce, which includes water, fat, caseinate, browning agent and a lysophospholipoprotein as an emulsifier.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat
Primary Examiner
Art Unit 1761